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No. 04-60

Supreme Court, U.S.
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In The
Supreme Court of the United States

MARTINGALE, LLC

Petitioner,

v.

THE CITY OF LOUISVILLE; WATERFRONT DEVELOPMENT CORPORATION

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

MARTINGALE'S REPLY MEMORANDUM IN SUPPORT OF ITS PETITION FOR A WRIT OF CERTIORARI

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1. Respondents admit that a Circuit conflict exists.

Respondents admit that there is a split among the Circuits over the application of 28 U.S.C. Section 2283 to a first-filed federal question action, stating: "The split among the circuits has no impact here . . . ". Response at 7. In fact, Respondents at one point argue that the Supreme Court should resolve the admitted split, asserting, "the [Supreme] Court should adopt the rule applied by the Second, Fourth, and the Sixth Circuits." Response at 18. Thus, Respondents actually suggest that certiorari should be granted to resolve the admitted split in the Circuits because this is the *only* way the Supreme Court could adopt the rule proposed by Respondents.

2. Factual distinctions between the various Circuit decisions are irrelevant.

That Section 2283 may apply to literally hundreds of factual scenarios is no reason to deny certiorari and is implicit in the Act itself. Martingale's position is that the rule first announced by the Sixth Circuit in *Roth v. Bank of Commonwealth*, 583 F.2d 527 (6th Cir. 1978), *cert. granted*, 440 U.S. 944 (1979), *cert. dismissed*, 442 U.S. 925 (1979) and continued here diverges significantly from the rules of the other Circuits. Martingale is not asserting that this case is *factually* similar to the dozen or so cases from different circuits which have applied different rules when interpreting the Act. The question is which rule of law should be applied in this case given that the Circuits have adopted so many different rules.

To advance their factual distinction arguments, Respondents mischaracterize the case most starkly at odds with the Sixth Circuit's *Roth* case, *Barancik v. Investors*

Funding Corp. of New York, 489 F.2d 933 (7th Cir. 1973) on several levels. In doing so, respondents focus almost exclusively on the factual underpinnings of the case and largely ignore the rule of law the *Barancik* Court announced which was itself not fact specific at all.

Respondents claim that the *Barancik* rule depended on the party's motivation in filing the state court action. However, the rule the Seventh Circuit adopted did not depend upon the motivation of the parties, "the mandatory prohibition in Section 2283 against injunctions staying court proceedings does not apply to state actions commenced after a motion for injunctive relief is filed in the federal court." *Id.* at 938.

Likewise, Respondents claim that in *Barancik* a federal motion was pending and that in this case "there was no motion pending on which the trial court could have ruled." Response at 8-9. Respondents base this statement on the fact that the filed motion for summary judgment was not ripe for decision. Again, this factual distinction found no part in the rule announced by the Seventh Circuit.

Finally, Respondents seem to assert that the Sixth Circuit in deciding this case merely distinguished its holding from that in *Barancik* on a factual basis. Again, any factual distinctions between the cases did not cause the differences between the Sixth and Seventh Circuit rules. Rather, the Sixth Circuit explicitly stated that it disagreed with the *logic* of the Seventh Circuit's holding. *Martingale, LLC v. City of Louisville*, 361 F.3d 297, 304 (6th Cir. 2004).

3. Because a split exists between the Circuits, the correctness of the underlying District Court decision is irrelevant.

Respondents request that the Supreme Court deny certiorari because of the alleged correctness of the underlying District Court decision. Response at 21. The Petitioner, however, has been denied its statutory right to an appeal *on the merits* of the District Court decision as required by 28 U.S.C. § 1291. The Court of Appeals refused to review the merits of the District Court decision because it found that the District Court did not have the *power* to decide the case. *Martingale, LLC*, 361 F.3d at 304. The requested Writ of Certiorari has nothing to do with the correctness of the District Court decision. We are not asking the Supreme Court to review the merits of the District Court's decision and, indeed, it is unlikely that this would be done because that issue was not decided by the Court of Appeals and is, therefore, not likely to be before this Court. Rather, we are asking the Supreme Court to grant us our statutory right to a review of the District Court decision by the United States Court of Appeals for the Sixth Circuit.

4. The existence of state law issues does not foreclose federal court review or the granting of certiorari.

Respondents argue that because the condemnation action here must allegedly be filed in State court, it follows that no federal action to resolve related federal claims can be pursued because the sole issue in the state condemnation action is whether the City has the right to condemn the bridge. Response at 6. However, this Court, in the face of a Section 2283 challenge, has recognized that a pending

state court proceeding does not necessarily preclude a federal court from adjudicating the merits of a related federal action as long as no injunction is issued against the state court proceeding. See *Atlantic Coast Line R.R. Co. v. Locomotive Engineers*, 398 U.S. 281, 295 (1970). ("In short, the state and federal courts had concurrent jurisdiction in this case, and neither court was free to prevent either party from simultaneously pursuing claims in both courts.")

The issues of paramount importance to Martingale, here, are not insubstantial federal questions. These issues include among others:

- May a city, as a subordinate sovereign, condemn a federal franchise? The Supreme Court in *State of California v. Central Pac. R. Co.*, 127 U.S. 141 (1888) held that a state cannot interfere with rights guaranteed by a superior sovereign – the United States – by taxing federal franchise rights.

- May a city condemn a bridge over a navigable stream? The Supreme Court held in *Covington & C. Bridge Co. v. Kentucky,* 154 U.S. 204 (1894) that a state could not regulate an interstate bridge established under federal law.

While these issues certainly impact upon the State Court's condemnation/right-to-take determination, they are essentially paramount federal issues. That is to say: (1) the rights which are inherent in federal franchises invoke the supremacy clause; and (2) the rights which exist with respect to bridges over navigable streams in interstate commerce invoke the interstate commerce clause.

5. Conclusion.

Certiorari should be granted because of the significant federal interest in resolving the split in the Circuits about whether a District Court may proceed to decide a first-filed federal question action when a related state law case has been filed but remains undecided.

Respectfully submitted,

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